

*Application No. 09/880615*  
*Page 2*

*Response*  
*Attorney Docket No. S63.2N-6531-US03*

### Remarks

This Response is in response to the Office Action dated January 8, 2004. In the Office Action claims 23, 25, 26, 29, and 30 were rejected under 35 USC 103(a) as being unpatentable over Yan (5,843,172) in view of Solovay (5,769,884). Claims 23-30 and 32-40 were rejected under 35 USC 103(a) as being unpatentable over Richter in view of Solovay (5,769,884) and Saunders (5,780,807). Applicant addresses these rejections below under paragraph heading consistent with those of the Office Action.

### (2)

In the Office Action claims 23, 25, 26, 29, and 30 were rejected under 35 USC 103(a) as being unpatentable over Yan (5,843,172) in view of Solovay (5,769,884). The Office Action acknowledges that Yan does not disclose forming a stent from a tube having substantially the same porosity about its circumference, or a first portion of the tube is characterized by a first porosity and second portion of the tube, longitudinally spaced from the first portion of the tube, is characterized by a second porosity different from the first porosity. The Office Action relies on Solovay, which discloses a stent covering which has different size openings in different regions, to supply the missing teaching.

Even assuming, for the sake of argument, that there were motivation to make the proposed combination, the proposed combination still does not render the invention obvious because it does not disclose all of the limitations of the instant claim. The instant claims require providing a tube having at least two different longitudinally spaced regions of different predetermined porosities and cutting a plurality of openings in the tube to form a stent from the tube. Although Solovay discloses a stent cover having different regions with different size openings formed therethrough by varying the weave or by drilling holes in the cover, Solovay does not disclose starting with a tube of different porosities and cutting a stent therefrom. Thus, even if the references were somehow combined, there is no suggestion or teaching in the combination to start with a tube having the different porosities.

Applicant believes that independent claim 23 is in condition for allowance and that those claims which draw their dependency from this claim are also in condition for

*Application No. 09/880615*  
*Page 3*

*Response*  
*Attorney Docket No. S63.2N-6531-US03*

allowance for at least the reason of being dependent on an allowable base claim. Therefore, the instant claims are not obvious in light of the proposed combination.

Applicant respectfully requests that the obviousness rejection of claims 23, 25, 26, 29, and 30 in light of Yan and Solovay be withdrawn.

(3)

In the Office Action claims 23-30 and 32-40 were rejected under 35 USC 103(a) as being unpatentable over Richter in view of Solovay (5,769,884) and Saunders (5,780,807). Regarding independent claim 23, the Office Action acknowledges that Richter does not disclose a tube having at least two different longitudinally spaced regions of different predetermined porosities and each region having substantially the same porosity about its circumference, and subsequently cutting a stent from the tube. The Office Action relies on Solovay which discloses a stent covering which is formed into a tube around the stent to supply the missing teaching of a stent having at least two different longitudinally spaced regions of different predetermined porosities and each region having substantially the same porosity about its circumference. The Office Action relies on Saunders to supply the missing teaching of cutting a stent from a tube. The Office Action asserts that it would have been obvious to combine these three references.

Even assuming, for the sake of argument, that there were motivation to make the proposed combination, the combination still does not render the invention obvious because it does not disclose all of the limitation of the instant claim. As discussed above, Solovay discloses a stent cover having different regions with different size openings therethrough formed by varying the weave or by drilling holes in the cover. Solovay does not disclose starting with a tube of different porosities and cutting a stent therefrom. Thus, even if the references were somehow combined, there is no suggestion or teaching in the combination to start with a tube having the different porosities. Moreover, none of the applied references provide the missing teaching.

For at least this reason, Applicant believes claim 23 overcomes this obviousness rejection and is in condition for allowance. Additionally, Applicant believes claims 24-30 which claim dependency on independent claim 23 are also in condition for allowance for at least the reason that they are dependent upon an allowable base claim. Applicant respectfully requests that the obviousness rejection of claims 23-30 in light of Richter, Solovay, and Saunders be

*Application No. 09/880615*  
*Page 4*

*Response*  
*Attorney Docket No. S63.2N-6531-US03*

withdrawn.

Independent claim 32 is also patentable over the applied art because, as discussed above, the combination of references fails to teach providing a tube with the recited porosities and then cutting a plurality of openings in the tube to form a stent. Claims 33-40 are dependent upon independent claim 32 and are patentable over the applied art for at least the reason of being dependent upon an allowable base claim.

Applicant respectfully requests that the obviousness rejection of claims 32-40 in light of Richter, Solovay, and Saunders be withdrawn.

### CONCLUSION

In view of the foregoing it is believed that the present application, with pending claims 23-30 and 32-40, is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

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By: Brendan C. Babcock  
Brendan C. Babcock  
Registration No.: 50705

6109 Blue Circle Drive, Suite 2000  
Mimmetonka, MN 55343-9185  
Telephone: (952) 563-3000  
Facsimile: (952) 563-3001  
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